

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ZIPWALL, LLC,

Plaintiff

v.

C & S MANUFACTURING INC.,

Defendant.

Civil Action No.:

AMOUNT \$150

SUMMONS ISSUED ☒

LOCAL RULE 4.1

WAIVER FORM

MCF ISSUED

BY DPTY. CLK.

1-14-04

MAGISTRATE JUDGE

Collings

COMPLAINT AND JURY DEMAND

1. Plaintiff ZipWall, LLC ("ZipWall"), is a Connecticut Limited Liability Company, having a principal place of business at 37 Broadway Street, Suite 2, Arlington, Massachusetts.
2. On information and belief, Defendant C & S Manufacturing Inc. ("C&S"), is an Illinois Corporation having a principal place of business at 1100 Westfield Way, Mundelein, Illinois.
3. This action arises under the Patent Laws of the United States, Title 35 of the United States Code, the Trademark Laws of the United States, Title 15, Section 1051 et seq. of the United States Code, and the common law.
4. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).
5. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b).

Count I (Patent Infringement)

6. ZipWall repeats and realleges paragraphs 1-5 above.

7. ZipWall is the owner of United States Patent No. 6,209,615 (the "'615 patent") issued on April 3, 2001, and has the right to sue on the '615 patent. A copy of the '615 patent is attached as Exhibit A.

8. C&S is marketing and selling goods nationally that are covered, literally or by equivalents, by one or more claims of the '615 patent.

9. On information and belief, C&S advertises and sells these goods nationally and exhibits these goods at national trade shows.

10. C&S has infringed, and is continuing to infringe, the '615 patent by making, selling, offering to sell, and using within the United States goods covered, literally or by equivalents, by one or more of the claims of the '615 patent.

11. C&S is inducing and contributing to infringement by others of the '615 patent, by causing others to make, use, sell, or offer to sell goods covered, literally or by equivalents, by the '615 patent within the United States.

12. C&S' infringement of the '615 patent is and has been willful, has caused and will continue to cause ZipWall to suffer substantial damages, and has caused and will continue to cause ZipWall to suffer irreparable harm for which there is no adequate remedy at law.

Count II (Trademark Infringement)

13. ZipWall repeats and realleges paragraphs 1-12 above.

14. ZipWall is the owner of United States Trademark Registration No. 2,296,378 (the “378 registration”) for the mark ZIPWALL, as well as common law rights in that mark. A copy of the ’378 registration is attached as Exhibit B.

15. C&S has misappropriated ZipWall’s trademarks, and/or used confusingly similar trademarks, in an effort to trade on the goodwill developed by ZipWall.

16. C&S’ actions constitute infringement of ZipWall’s registered trademark as well as ZipWall’s common law trademark rights.

17. C&S’ infringement of the ’378 registration and ZipWall’s common law trademark rights has been willful, has caused and will continue to cause ZipWall to suffer substantial damages, and has caused and will continue to cause ZipWall to suffer irreparable harm for which there is no adequate remedy at law.

Count III (Unfair Competition)

18. ZipWall repeats and realleges paragraphs 1-18 above.

19. ZipWall’s trademarks are well-recognized for quality dust control products.

20. C&S offers and provides similar goods and services to the same class of customers as ZipWall.

21. C&S’ use of a nearly identical or confusingly similar trademark and other efforts to associate itself with ZipWall and/or trade on the goodwill of ZipWall constitutes unfair competition in violation of the Lanham Act and the common law.

22. C&S’ unfair competition has been willful, has caused and will continue to cause ZipWall to suffer substantial damages, and has caused and will continue to cause ZipWall to suffer irreparable harm for which there is no adequate remedy at law.

Relief Requested

WHEREFORE, ZipWall requests that this Court:

A. enter a preliminary and permanent injunction enjoining C&S and its affiliates, subsidiaries, officers, directors, employees, agents, representatives, licensees, successors, assigns, and all those acting for any of them or on their behalf, or acting in concert with them, from further infringement of the '615 patent;

B. enter a preliminary and permanent injunction enjoining C&S and its affiliates, subsidiaries, officers, directors, employees, agents, representatives, licensees, successors, assigns, and all those acting for any of them or on their behalf, or acting in concert with them, from further infringement ZipWall's registered and common law trademarks;

C. enter a preliminary and permanent injunction enjoining C&S and its affiliates, subsidiaries, officers, directors, employees, agents, representatives, licensees, successors, assigns, and all those acting for any of them or on their behalf, or acting in concert with them, from engaging in unfair competition with ZipWall;

D. award ZipWall compensatory damages and its costs and interest;

E. award ZipWall treble damages for C&S' willful infringement;

F. award ZipWall its reasonable attorneys' fees; and

G. award ZipWall such other relief as the Court deems just and proper.

Jury Demand

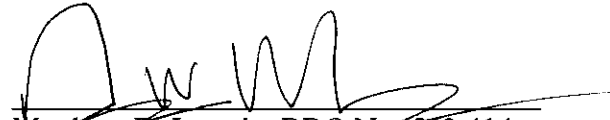
ZipWall demands a trial by jury on all issues so triable.

Respectfully submitted,

ZIPWALL, LLC

January 9, 2004

by:

A handwritten signature in black ink, appearing to read 'Matthew B. Lowrie', is written over a horizontal line.

Matthew B. Lowrie, BBO No. 563,414

Aaron W. Moore, BBO No. 638,076

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